IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Misc. Application No. 209 of 2003

Chhitij Agrawal
s/o late Sri Pannalal Aggarwal
r/o Ashirvad 115 Avas Vikas
Kashipur
District Udham Singh Nagar

applicant

Versus

1 State of Uttaranchal
2 Jindal Fincap Limited, Ramnagar Road
Kashipur,
District Udham Singh Nagar
Through its Manager Vikas Jindal
R/o Kashipur
District Udham Singh Nagar Opposite party.

Hon'ble B.C. Kandpal, J.

By way of this petition under Section 482 Cr.PC the petitioner has sought the relief for quashing the judgment and order dated 5.9.2003 passed by Session Judge, Udham Singh Nagar in Criminal Revision No. 43 of 2002 Chhitij Aggarwal vs M/s Jindal Fincasp Ltd and order dated 12.11.2001 as well as 16.7.2002 passed by Additional Chief Judicial Magistrate, Kashipur in Criminal case No. 2916 of 2001 Jindal Fincap Limited vs Chhitij Aggarwal u/s 138 Negotiable Instruments Act.

Brief facts of the case are that opposite party No. 2 Jindal Fincap Limited field criminal complaint under Section 138 Negotiable Instruments Act against the petitioner. The learned Addl. Chief Judicial Magistrate passed order dated 12.11.2001 summoning the applicant. The applicant filed the protest petition

against the summoning order which was dismissed by the Add. Chief Judicial Magistrate vide order dated 16.7.2002. The petitioner thereafter filed criminal revision before the Sessions Judge which was also dismissed vide order and judgments dated 5.9.2003. The petitioner thereafter filed this petition before this court.

Heard learned counsel Sh. Dharamveer for the petitioner learned AGA for opposite paprty No. 1 and Sh. Jagdish Prasad Verma, learned counsel for opposite party No. 2 and perused the record.

The learned counsel for the petitioner has invited my attention towards the complaint filed before the court below. Paragraph (4) four of the complaint shows that after the cheque was dishonored, the complainant (respondent No. 2) on 19.9.2001 sent a notice to Chhitij Aggarwal intimating therein that the cheque has been dishonored and now the accused has to pay the amount mentioned in the cheque within fifteen days on receipt of notice otherwise proceedings shall be initiated against him under section 138 Negotiable Instruments Act and this paragraph further reveals that the accused even after the lapse of the period mentioned in the notice did not pay back the money to the complainant. The the sole contention of the learned counsel for the petitioner is that there is no mention in the complaint that the notice was in fact served upon the petitioner, hence the complaint is not maintainable.

The learned counsel for respondent No. 2 has argued that in case if the date of notice is not mentioned in the complaint, the same is not a ground for rejection of the complaint as it a question of fact to be decided by trial court.

Perusal of the complaint nowhere discloses that the notice was in fact served upon the accused. I could not lay my hands in the averments made in the complaint that the notice has ever been

served upon the accused/petitioners. Paragraph 4 of the complaint is relevant and runs as under:

> *" यह कि चैक डिसओनर हो जाने पर परिवादी ने अपने अधिवक्ता श्रीजयनन्दन अग्रवाल एडवोकेट काशीपुर के माध्यम से मुल्जिम को दिनांक 19/09/2001 को नोटिस प्रेषित किया कि उसके द्वारा जारी किये गये चैक का भुगतान नहीं हो सका है, अतः वह नोटिस पाने के 15 दिन में चैक में वर्णित रकम की अदायगी परिवादी को कर दे अन्यथा उसके विरूद्ध मजबूरन धारा 138 नगो0इन्स0एक्ट के तहत कार्यवाही की जायेगी। लेकिन मुलजिम द्वारा नोटिस की अवधि बीत जाने पर भी चैक की राशि का भुगतान परिवादी को नहीं किया हैं ।"*

From the perusal of the aforesaid paragraph, it clearly appears to me that there is no mention therein that the notice has been served upon the accused / petitioner, I think that in the aforesaid circumstances it must be held that notice has not been served upon and thereafter an application under section 138 Negotiable instruments Act could not have been maintained. The accused has a right to pay money within fifteen days from the date of service of notice and only when it fails to pay than it is open for the complainant to file a case under section 138 Negotiable instruments Act

In view of the aforesaid position and the averments made in the complaint itself I am of the view that the complaint is not maintainable and is liable to be quashed. My view is fortified by the judgment of the Hon'ble Apex court reported in 2000 J.Cr. C 390(SC) titled as Shakti Travels and Tours vs State of Bihar and another.

In view of the aforesaid assessment as well as the expressed view by the Hon'ble Apex Court in above referred case, the complaint against the petitioner is quashed. The petition is accordingly allowed. The criminal proceedings in criminal case No.

2916 of 2001 Jindal Finscap Ltd vs Chhitij Agrawal u/s 138 Negotiable Act pending in the court of Addl. Chief Judicial Magistrate, Kashipur are hereby quashed.

(B.C. Kandpal,J)

October 7 2005
nbj